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**MAILED**  
**AUG 02 2010**  
**OFFICE OF PETITIONS**

In re Patent No. 7,188,138  
Issue Date: March 3, 2007  
Application No. 10/604,626  
Filed: August 5, 2003  
Attorney Docket No. 93766

: DECISION ON PETITION  
: UNDER 37 CFR 1.323 and 37 CFR 1.322  
: AND REQUEST FOR  
: CERTIFICATE OF CORRECTION  
:

This is a decision on the renewed request, filed March 26, 2010, filed under 37 CFR 1.323 and 37 CFR 1.322, to correct the patent by way of certificate of correction.

The petition under 37 CFR 1.323 and 37 CFR 1.322 is **DISMISSED**.

Petitioner argues that application serial number 09/683,481 became abandoned on October 1, 2003; however, the date of abandonment for the application is May 4, 2003 (*i.e.*, three months from the mailing date of the final Office action) not the mailing date of the Notice of Abandonment. Accordingly, no copendency exists between the instant application and application serial number 09/683,481. Petitioner may wish to file a petition to revive application serial number 09/683,481 for purposes of copendency should they desire to do so.

Petitioner further argues that a petition under 37 CFR 1.78 is not necessary as the error in failing to list the continuity data is an Office error. Specifically, petitioner argues that the continuing data was placed in an Application Data Sheet (ADS) and the Office failed to recognize the benefit claim therein.

37 CFR 1.76 states:

(a) Application data sheet. An application data sheet is a sheet or sheets, that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. **An application data sheet must be titled "Application Data Sheet" and must contain all of the section headings listed in paragraph (b) of this section, with any appropriate data for each section heading.** If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.

(b)Bibliographic data. Bibliographic data as used in paragraph (a) of this section includes:

(1)Applicant information. This information includes the name, residence, mailing address, and citizenship of each applicant (§ 1.41(b)). The name of each applicant must include the family name, and at least one given name without abbreviation together with any other given name or initial. If the applicant is not an inventor, this information also includes the applicant's authority (§§ 1.42, 1.43, and 1.47) to apply for the patent on behalf of the inventor.

(2)Correspondence information. This information includes the correspondence address, which may be indicated by reference to a customer number, to which correspondence is to be directed (see § 1.33(a)).

(3)Application information. This information includes the title of the invention, a suggested classification, by class and subclass, the Technology Center to which the subject matter of the invention is assigned, the total number of drawing sheets, a suggested drawing figure for publication (in a nonprovisional application), any docket number assigned to the application, the type of application (e.g., utility, plant, design, reissue, provisional), whether the application discloses any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2 of this chapter (see § 5.2(c)), and, for plant applications, the Latin name of the genus and species of the plant claimed, as well as the variety denomination. The suggested classification and Technology Center information should be supplied for provisional applications whether or not claims are present. If claims are not present in a provisional application, the suggested classification and Technology Center should be based upon the disclosure.

(4)Representative information. This information includes the registration number of each practitioner having a power of attorney in the application (preferably by reference to a customer number). Providing this information in the application data sheet does not constitute a power of attorney in the application (see §1.32).

(5)Domestic priority information. This information includes the application number, the filing date, the status (including patent number if available), and relationship of each application

for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c). Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and § 1.78(a)(2) or § 1.78(a)(5), and need not otherwise be made part of the specification.

(6)Foreign priority information. This information includes the application number, country, and filing date of each foreign application for which priority is claimed, as well as any foreign application having a filing date before that of the application for which priority is claimed. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and § 1.55(a).

(7)Assignee information. This information includes the name (either person or juristic entity) and address of the assignee of the entire right, title, and interest in an application. Providing this information in the application data sheet does not substitute for compliance with any requirement of part 3 of this chapter to have an assignment recorded by the Office. **[Emphasis Added]**

A thorough review of the record indicates that: (1) the first sentence of the application included a benefit claim; and (2) a paper entitled Application Data Sheet was filed on August 5, 2003. Unfortunately, the benefit claim only set forth a proper relationship between the instant application and application serial number 09/683,481, and no copendency exists between the two applications. See MPEP 2011.11. Additionally, the ADS does not include all of the section headings listed in 37 CFR 1.76(b). See MPEP 601.05. Therefore, the ADS is not a proper ADS and the information therein was not incorporated.

In view of the above, a proper petition under 37 CFR 1.78 is required to correct the benefit claim(s) in the instant application.

With respect to the request for refund of the petition fee of \$1410, the Office never charged the above mentioned fee to petitioner's deposit account, so the refund request is dismissed as moot.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Mail Stop PETITIONS  
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By hand:                 Customer Service Window  
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By fax:                   (571) 273-8300  
                              ATTN: Office of Petitions

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642.

/dab/  
David Bucci  
Petitions Examiner  
Office of Petitions